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PATENT
Customer No. 22,852
Attorney Docket No. 05725.1021

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Jean-Louis H. GUERET

Application No.: 10/073,302

Filed: February 13, 2002

For: APPLICATOR ASSEMBLY,
SYSTEM, AND METHOD

)
)
) Group Art Unit: 3751

)
) Examiner: Huyen Le

#7/Recons.
12/19/03
Brewer

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

RESPONSE TO OFFICE ACTION DATED SEPTEMBER 17, 2003

Claims 1-136 are currently pending in this application. Of the pending claims, claims 27, 32-36, 38-40, 88, 93-97, and 99-101 were withdrawn from consideration as a result of the Response to Election of Species Requirement filed July 2, 2003. Since Applicant believes that each of the independent claims from which the withdrawn claims depend is allowable, as will be explained below, Applicant requests that the withdrawn claims be rejoined and allowed.

In the Office Action, claims 1-21, 24, 25, 30, 41-45, and 58-60 were rejected under 35 U.S.C. § 102(b) as being anticipated by French Patent No. 782,500 to Pouly, and claims 22, 23, 26, 28, 29, 37, 46-57, 61-87, 89-92, 98, and 102-136 were rejected under 35 U.S.C. §103(a) as being unpatentable over Pouly in view of U.S.

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Patent No. 5,904,151 to Gueret.¹ Of these rejected claims, claims 1, 61, 122, and 130 are independent.

Regarding the rejection of independent claim 1, Applicant respectfully requests the withdrawal of this rejection since Pouly lacks any teaching of "a holder configured to hold the product and to be removably mounted relative to the application member so as to permit the chamber to removably receive the product, the holder being further configured such that the holder has a substantially fixed axial position with respect to at least a portion of the application member when the holder is mounted relative to the application member," as recited in claim 1.

Pouly discloses a shaving brush in combination with shaving soap. In the various embodiments of Figs. 1, 3, 4, and 5, Pouly discloses a stick of soap 1 that is removably mounted in an opening in a deformable material 3. In Fig. 1, the stick 1 is held in a protective foil sleeve 2. In Fig. 3, the stick 1 is held in a threaded part 5 which is engaged via screw threading with a support 4 attached to the material 3. In Fig. 4, the stick 1 is held by part 6 which is frictionally engaged with a support 4 attached to the material 3. In Fig. 5, the stick 1 is held in a cup 9 which is frictionally engaged with the support 4 attached to the material 3. In each of these embodiments, Pouly discloses that the portion holding the stick 1 (e.g., elements 2, 5, 6, and 9) is configured to move relative to the material 3 and/or the support 4. For instance, referring to the English translation of Pouly (a copy of which was submitted with the Information Disclosure Statement filed February 13, 2002), Pouly specifically

1 Applicant notes that at page 4, item no. 8 of the Office Action, the Examiner lists claims 102-10 as being rejected under 35 U.S.C. §103(a) over Pouly in view of Gueret. Applicant assumes that this was a typographical error and that the Examiner intended to list claims 102-105

states that "the stick of soap or a support therefore may be adjusted in terms of position in the tubular support of the spongy material." Thus, Pouly neither discloses nor otherwise suggests "a holder configured to hold the product and to be removably mounted relative to the application member so as to permit the chamber to removably receive the product, the holder being further configured such that the holder has a substantially fixed axial position with respect to at least a portion of the application member when the holder is mounted relative to the application member," as recited in claim 1. For at least this reason, the Section 102 rejection of claim 1 and its dependent claims based on Pouly should be withdrawn.

Regarding the rejection of independent claim 61 based on Pouly in view of Gueret, this rejection should be withdrawn because the Office Action fails to set forth a *prima facie* case of obviousness.

As discussed above, Pouly discloses a shaving brush in combination with shaving soap. As acknowledged by the Examiner at page 4 of the Office Action, Pouly does not disclose "a lid configured to removably cover at least a portion of the application member," as recited in claim 61. To cure this deficiency of Pouly, the Examiner relies on Gueret, and in particular the embodiments of Figs. 7A, 7D, and 8A of that reference. Referring to Figs. 7A, 7D, and 8A, Gueret discloses an applicator for a friable product that includes a bottom 12 on which a foam block 2 is mounted. Gueret further discloses a lid 13 detachably mounted to the bottom 12. (Col. 7, lines 1-15). The Examiner's asserts at page 4 of the Office Action that providing the lid 13 disclosed by Gueret with the shaving brush combination disclosed by Pouly would have been obvious to one of ordinary skill in the art at the time of the invention.

Applicant respectfully disagrees with the Examiner's assertion that it would have been obvious to one of ordinary skill in the art to modify Pouly with Gueret. There is no motivation to combine the Pouly and Gueret references in the manner suggested by the Examiner since the structural configuration of Gueret's applicator differs from the structural configuration of Pouly's shaving brush. In particular, Gueret teaches that the lid 13 detachably mounts to the bottom 12. The shaving brush of Pouly does not include a bottom having a structural configuration like that of Gueret's bottom 12. That is, because the deformable material 3 of Pouly extends radially farther than any other element of the shaving brush embodiments disclosed by Pouly, there is no element like that of bottom 12 of Gueret to which a lid like lid 13 taught by Gueret can be mounted. To combine the lid of Gueret with the shaving brush of Pouly, as suggested by the Examiner, therefore, would destroy the principle of operation of the lid 13 taught by Gueret, which Gueret teaches as being configured to mount with a bottom 12. According to M.P.E.P. § 2143.02, if the proposed modification or combination of the prior art would change the principle of operation of the prior art invention, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. For at least this reason, therefore, the Section 103 rejection of claim 61 and its dependent claims based on Pouly and Gueret should be withdrawn.

Regarding independent claims 122 and 130, the rejection of those claims based on Pouly in view of Gueret should be withdrawn because those references fail to disclose each and every element of the claims. Claim 122 is directed to an applicator system and recites, among other things, "a plurality of application

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members” and “at least one holder configured to hold the product and to be removably mounted relative to each of the application members.” Claim 130 is directed to an applicator system and recites, among other things, “at least one application member” and “a plurality of holders configured to hold the product and to be removably mounted relative to the at least one application member.”

At page 5 of the Office Action, the Examiner acknowledges that Pouly does not disclose an applicator system “comprising a plurality of application members and holders.” To cure these noted deficiencies of Pouly, the Examiner relies on Gueret. As discussed above, Gueret discloses an applicator for a friable product. In the exemplary embodiment of Fig. 12, Gueret discloses an application unit 10 having a plurality of applicators 1, 1', 1", each having a different product P, P', P". Gueret further discloses that each applicator 1, 1', 1" has a female part 22 capable of cooperating with a male part 23 of a handle 21. (Col. 8, lines 48-58.) Thus, Gueret discloses that each applicator 1, 1', 1" holds a different product P, P', P". Gueret does not disclose or otherwise suggest, however, either “a plurality of application members” and “at least one holder configured to hold the product and to be removably mounted relative to each of the application members,” as recited in claim 122, or “at least one application member” and “a plurality of holders configured to hold the product and to be removably mounted relative to the at least one application member,” as recited in claim 130. For at least these reasons, the rejection of claims 122 and 130, and their respective dependent claims, based on Pouly in view of Gueret should be withdrawn.

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Also in the Office Action, claims 1-4, 6-16, 19-26, 28-31, 41, 45, 58-64, 66-87, 89-92, 102, and 118-121 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 2,962,743 to Henriksson, and claims 37 and 98 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Henriksson in view of U.S. Patent No. 2,361,407 to McNair.

Each of independent claims 1 and 61 is directed to an applicator assembly and recites, among other things, "an application member" and "a holder configured to hold the product and to be removably mounted relative to the application member."

Henriksson discloses a shoe cream applicator with a laminated plastic sponge pad. In the sole embodiment shown in the drawing, the shoe cream applicator of Henriksson includes a spreader cap 10 which has a base member 12. (Col. 1, lines 72.) The base member 12 is configured to be secured to a dispensing container, such as a collapsible paste tube 20. (Col. 2, lines 4-9.) Henriksson further discloses that the base member 12 is provided with a flat face 26 to which a multilayer cellular pad 28 is secured. (Col. 2, lines 14 and 15.) In the Office Action at page 3, the Examiner equates Henriksson's multilayer cellular pad 28 with the application member recited in claims 1 and 61 and equates Henriksson's base member 12 with the holder recited in claims 1 and 61. However, Henriksson fails to disclose or otherwise suggest that the base member 12 is removably mounted relative to the cellular pad 28, and the Examiner has pointed to no disclosure in Henriksson to support an assertion otherwise. To the contrary, as noted above, Henriksson discloses that the multilayer cellular pad 28 is secured to the base member 12. McNair does not cure this noted deficiency of Henriksson and there is no assertion otherwise in the Office Action. For at least these

reasons, therefore, the Section 102 and 103 rejections of claims 1 and 61, and their independent claims, based on Henriksson should be withdrawn.

Claims 2-60, 62-121, 123-129, and 131-136 depend from one of claims 1, 61, 122, and 130, respectively, and therefore are allowable for at least the same reasons those claims are allowable. In addition, at least some of the dependent claims recite unique features and/or combinations that distinguish from the cited art and therefore at least some also are separately patentable.

Applicant requests the withdrawal of the outstanding claim rejections, the rejoinder of withdrawn claims 27, 32-36, 38-40, 88, 93-97, and 99-101, and the allowance of pending claims 1-136.

The Office Action contains various characterizations and assertions regarding Applicant's claims and the cited art with which Applicant does not necessarily agree. To the extent Applicant has not specifically addressed any of those characterizations and assertions, Applicant declines to subscribe to the same.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

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Dated: December 16, 2003

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